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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-284

AMALGAMATED LOCAL UNION 355,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD and
VANELLA BUICK OPEL, INC.,

Respondents.

SUPPLEMENTARY PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THRD CIRCUIT

SIDNEY O. RAPHAEL
Attorney for Petitioner,
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New York, New York 10021
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Of Counsel:
ROBERT E. SCHER

August 22, 1973

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Jurisdiction

The Judgment of the Circuit Court of Appeals was entered on April 3, 1973. On May 30, 1973, as set forth in the Affidavit of Louis Mark (Appendix A), forty copies of a Petition for a Writ of *Certiorari* herein were mailed and presumably received and filed by the Clerk of the Court.

Petitioner's attorney made a routine inquiry as to the status of the case on August 1, and learned on August 6, that neither the Petition nor any other documents had been received and filed by the Clerk of this Court. Accordingly, service was again made, and the case docketed on August 10, 1973.

Reasons for Accepting the Petition as Timely Filed

Petitioner anticipates that counsel for respondent will object to the jurisdiction of this Court. Even should no

objection be raised, petitioner believes that the Court is entitled to an explanation of the events which prevented the filing of the Petition within ninety days after entry of the Judgment Order. Further, and in keeping with our past practice, this Supplementary Petition will be served and filed as promptly as possible, just as we attempted to file the original Petition within sixty days, so as to demonstrate that Petitioner's actions are not for purposes of delay.

Our firm has engaged Mr. Mark (See Appendix A) for over thirty years, and to the best of my knowledge, we have never before had a situation wherein papers sent to a Court for filing were lost in the mail. Should the Justices of this Court determine that the Petition is without substantive merit, that is a fact which we and our client, a labor organization with approximately 7,000 members, must accept. However, if these and any prospective members are deprived of their right to a bargaining agent of their choice because of an error on the part of the Postal Service, then we believe that an injustice would be perpetuated.

CONCLUSION

For the reasons above noted, it is urged that the Writ of *Certiorari* mailed May 30, 1973 be filed *nunc pro tunc.*

Respectfully submitted,

SIDNEY O. RAPHAEL,
Attorney for Petitioner,
770 Lexington Avenue,
New York, New York 10021
(212) TE 2-7700

Of Counsel:

ROBERT E. SCHER
August 22, 1973

APPENDIX A

SUPREME COURT OF THE UNITED STATES

Affidavit

AMALGAMATED LOCAL UNION 355,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD and
VANELLA BUICK OPEL, INC.,

Respondents.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LOUIS MARK, being duly sworn, deposes and says:

1. I am Secretary-Treasurer of Lex Printing Company, Inc., 421 Hudson Street, New York, New York 10014.

2. I am a specialist in legal and financial printing and for over 30 years have printed briefs, records on appeal, and similar matters for law firms in the City of New York, and specifically for the attorneys for Petitioner herein.

3. On May 30, 1973, I mailed 40 copies of a Petition for a Writ of *Certiorari* in the above-captioned matter to the Clerk, Supreme Court of the United States, Supreme Court Building, Washington, D. C. 20543, together with proof of service of additional copies upon the National Labor Relations Board.

Appendix A

4. All of the foregoing were mailed by First Class Mail at the United States Post Office, 150 Christopher Street, New York, New York 10014.

5. On August 6, 1973, I was informed by my client, Robert Scher, Esq. of Raphael, Searles, Vischi, Scher, Glover & D'Elia, attorneys for Petitioner, that he had just learned from Deputy Clerk Lazowsky that his papers were not on file with the Supreme Court. Thereafter, one of my staff contacted Ms. Lazowsky on August 7, 1973 and she confirmed that an additional search had been made upon Mr. Scher's request and that the 40 copies heretofore mailed had still not been located. She suggested that service be effected again and that I prepare this affidavit setting forth the foregoing facts.

(Sworn to before me this 9th
day of August, 1973.)

/s/ Louis Mark

QUINTON C. VAN WYNEN
Notary Public, State of New York
No. 24-4087465
Qualified in Kings County
Commission Expires March 30, 1975